



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

January 22, 1960

Honorable Henry Wade
District Attorney
Records Building
Dallas 2, Texas

Opinion No. WW-786

Re: City improvement assessments
against Hospital District
property.

Dear Mr. Wade:

We quote from your opinion request as follows:

"On February 23, 1959 the Dallas County Hospital District requested an opinion from this office with reference to city improvement assessments against Hospital District property. Mr. George Biggs, who was with this office at that time, rendered an opinion to the effect that the City of Dallas, a political sub-division, did not have authority to make assessments against the Dallas County Hospital District for cost of paving streets and highways adjoining the Hospital.

"Since the opinion was rendered, the Fort Worth Court of Civil Appeals in the case of Wichita County Water Improvement District No. 2 vs. City of Wichita Falls, 323 S.W.2d 298, held that the assessment made by a County Water Improvement District for a local improvement is not a tax within the meaning of the constitutional provisions exempting municipal land from property taxes. We believe, since reading this opinion, that it is in point, and that the opinion rendered by Mr. Biggs is not sustained under the authorities cited in this case. We have been requested to secure an opinion from your office with reference to the liability of the Hospital District for the paving assessment."

In reference to your direct question, the recent case of Wichita County Water Improvement District No. 2 v. The City of Wichita Falls, cited in the opinion request, is directly in point. In this case, decided by the Fort Worth Court of Civil Appeals on March 27, 1959, it was held that property belonging

to the City of Wichita Falls located within a water improvement district was subject to benefit assessments levied by the water district; the Court considered that the assessments were not taxes, and were not inhibited by Art. XI, Sec. 9, Tex. Const. Application for writ of error in the Wichita County case was refused on July 15, 1959, with the notation "Refused. No Reversible Error." Though this docket notation may have cast certain doubt (the extent of which has never been satisfactorily defined) upon the reasoning of the Fort Worth Court, the Supreme Court's refusal to entertain the writ of error laid to rest any question as to the continued vitality of the early case of Harris County v. Boyd, 7 S.W. 713 (Tex. Sup.Ct. 1888), which reached a directly contrary result. Under settled principles of stare decisis, the Supreme Court-approved decision in the more recent case must be deemed controlling. Accordingly, you are advised that the Dallas County Hospital District is liable for the City of Dallas assessments for cost of paving streets and highways adjoining the County hospital.

S U M M A R Y

The Dallas County Hospital District is liable for City of Dallas assessments for costs of paving streets and highways adjoining the County hospital.

Yours very truly,

WILL WILSON
Attorney General of Texas

By Jack N. Price
Jack N. Price
Assistant

JNP:cm

APPROVED:

OPINION COMMITTEE:
W. V. Geppert, Chairman

W. R. Scruggs
Don Bernard
Charles D. Cabaniss
Leon F. Pesek

REVIEWED FOR THE ATTORNEY GENERAL

By: Leonard Passmore